

1 GORDON P. ERSPAMER (CA SBN 83364)
2 JAMES M. SCHURZ (CA SBN 145874)
3 REBECCA SNAVELY SAE LAO (CA SBN 222731)
4 DEREK F. FORAN (CA SBN 224569)
5 MORRISON & FOERSTER LLP
6 101 Ygnacio Valley Road, Suite 450
7 P.O. Box 8130
Walnut Creek, California 94596-8130
Telephone: (925) 295-3300

6 Attorneys for Plaintiffs
CALPINE CORPORATION and CALPINE CONSTRUCTION
7 FINANCE COMPANY, L.P.

8

9
10 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11

12 CALPINE CORPORATION, a Delaware
Corporation, and CALPINE CONSTRUCTION
13 FINANCE COMPANY, L.P., a Delaware Limited
Liability Partnership,

14 Plaintiffs,

15 v.

16 WESTERN AREA POWER ADMINISTRATION,
an Agency of the United States Department of
Energy; MICHAEL S. HACSKAYLO, in his capacity
17 as Administrator of the Western Area Power
Administration; SAMUEL WRIGHT BODMAN, in
his capacity as Secretary of Energy of the United
18 States, acting by and through the Western Area Power
Administration; THE UNITED STATES
19 DEPARTMENT OF ENERGY, acting by and
through the Western Area Power Administration; the
20 UNITED STATES of AMERICA, acting by and
through the Western Area Power Administration,

21 Defendants.

22

23

24

25

26

27

28

Case No. C05-02241-SI

STIPULATION AND [PROPOSED]
ORDER TEMPORARILY STAYING
CASE; CONTINUING AND TAKING
OFF CALENDAR BRIEFING AND
HEARING ON MOTION TO
DISMISS; AND CONTINUING ALL
CASE DEADLINES DURING
PENDENCY OF STAY

1 WHEREAS Plaintiffs Calpine Corporation and Calpine Construction Finance Company, L.P.
2 ("Calpine") and Defendants Western Area Power Administration, et al. ("Western") have agreed that
3 they mutually desire a temporary stay of the case in order to pursue potential options for resolving
4 this case, and agree, and understand that third party Sacramento Municipal Utility District ("SMUD")
5 agrees, to work toward a resolution of this case;

6 IT IS HEREBY STIPULATED by and between the undersigned, subject to the approval of
7 the Court, that this action is temporarily stayed as follows:

8 1. The hearing on Western's Motion to Dismiss, set for October 18, 2005 at 9:00 a.m.,
9 and the Case Management Conference scheduled to immediately follow that hearing, are both
10 continued and taken off calendar. These items will be put back on calendar for the first available date
11 that gives the parties sufficient time under the Federal Rules of Civil Procedure to finish briefing their
12 positions, should the stay be lifted. This stay, however, shall not prevent Calpine from filing its
13 Opposition to the Motion to Dismiss should it so desire, nor shall it prevent Western from, in the
14 event Calpine files its Opposition, filing a Reply in Support of the Motion to Dismiss. However,
15 during the pendency of the stay, neither an Opposition nor a Reply is required;

16 2. All Court deadlines, including the deadlines for the parties to complete initial
17 disclosures or state objection in Rule 26(f) Report, file/serve Case Management Statement, and
18 file/serve a supplemental Rule 26(f) Report, are continued, day for day, during the pendency of the
19 stay (for example, if the stay lasts a total of thirty days, the new deadline would be the current date,
20 plus thirty days);

21 3. All discovery in this action is temporarily stayed, subject to all parties and all
22 subpoenaed third parties acknowledging their obligations to preserve documents responsive to
23 discovery requests and document subpoenas, and otherwise preserving all documents required to be
24 preserved by law. This stay of discovery is without prejudice to Calpine's right to obtain agreement
25 from third parties to preserve responsive documents, continue meet and confer processes, or to
26 negotiate the entry and filing of appropriate protective orders with third parties; including seeking
27 intervention from the Court regarding any dispute(s) relating to any third party's obligation to
28

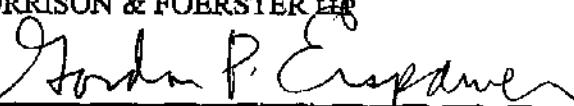
1 preserve documents responsive to subpoenas. Western and Calpine acknowledge their obligations to
2 preserve documents;

3 4. During the pendency of the Stay, Calpine shall be permitted, but not obligated, to file
4 an Amended Complaint, including but not limited to an Amended Complaint to add additional
5 parties. In the event the stay is lifted, Defendants' time to answer any Amended Complaint, as
6 provided in Federal Rule of Civil Procedure 15(a), will run from the date that the stay is no longer
7 effective;

8 5. The stay may be terminated by either party giving 7 calendar days' advance notice of
9 termination of the stay, via notice filed with the Court (for example, if a party gives notice of
10 termination of the stay on the first of the month, the stay would continue through the eighth day of
11 that month, and would no longer be in effect on the ninth day of that month).

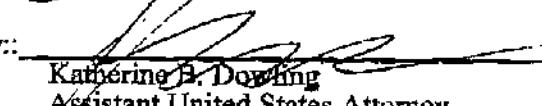
12 Dated: September 12, 2005

13 GORDON P. ERSPAMER
14 JAMES M. SCHURZ
15 REBECCA SNAVELY SAE LAO
16 DEREK F. FORAN
17 MORRISON & FOERSTER LLP

18 By: 
19 Gordon P. Ersparer
20 Attorneys for Plaintiffs
21 Calpine Corporation, and Calpine
22 Construction Finance Company, L.P.

23 Dated: September 12, 2005

24 KEVIN V. RYAN
25 UNITED STATES ATTORNEY

26 By: 
27 Katherine B. Dowling
28 Assistant United States Attorney
 Attorneys for Defendants

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: September ___, 2005

CASE NO. C05-02241-SI
STIPULATION AND [PROPOSED] ORDER TEMPORARILY STAYING CASE
wc-110211

